

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Digital Output Protection Technology and Recording Method Certifications)	MB Docket No. 04-298
)	
DivX DRM)	

**OPPOSITION TO THE APPLICATION OF DIVXNETWORKS, INC. FOR
AUTHORIZATION OF DIVX DRM BY THE MOTION PICTURE ASSOCIATION OF
AMERICA, INC., METRO-GOLDWYN-MAYER STUDIOS INC., PARAMOUNT
PICTURES CORPORATION, SONY PICTURES ENTERTAINMENT INC.,
TWENTIETH CENTURY FOX FILM CORPORATION, UNIVERSAL CITY
STUDIOS LLLP, THE WALT DISNEY COMPANY, AND
WARNER BROS. ENTERTAINMENT INC.**

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The Motion Picture Association of America, Inc., Metro-Goldwyn-Mayer Studios Inc., Paramount Pictures Corporation, Sony Pictures Entertainment Inc., Twentieth Century Fox Film Corporation, Universal City Studios LLLP, The Walt Disney Company, and Warner Bros. Entertainment Inc. (collectively, “the MPAA Parties”) hereby file this opposition to the application of DivXNetworks, Inc. (“DXN”) to have DivX DRM be approved as an Authorized Digital Output Protection Technology for Marked Content (the “Certification”).

While both DXN’s Certification submission and its professed willingness to accommodate concerns about the DivX DRM technology suggest that DivX DRM is a promising start to an effective digital rights management regime, the Certification is deficient as currently submitted because it does not adequately describe how DivX DRM can be utilized to protect

Marked Content in compliance with the Broadcast Flag Report & Order (“Flag Order”).¹ As a result, if the technology as proposed by DXN in its Certification submission is approved without amendment or conditions, the Commission will undermine the goals established in the Flag Order. But because the MPAA believes that the proposed DivX DRM technology might, if modified, appropriately serve the goals of the Flag Order, we briefly discuss below the ambiguities and/or deficiencies in the Certification. Additionally, we express our interest in working with DXN so on a revised submission that would be entitled to authorization from the Commission.

Unfortunately, DXN has provided insufficient information about the DivX DRM system in general and about how it would protect Marked Content in particular. As proposed, the DivX DRM system places no meaningful restrictions on the scope of redistribution of broadcast content. For example, the Certification provides no form of proximity control, nor does it precisely define a specific maximum number of compliant DivX DRM devices that can receive, copy, and play DivX-protected content originating from a single Covered Demodulator Product that together might reasonably constrain distribution as required by the Flag Order. In addition, DivX has provided no adopter licenses, nor any compliance and robustness rules for DivX DRM-licensed products, to help ensure that the technology is implemented as intended. The Certification does not describe key security mechanisms, such as the process for effective invocation of revocation and renewability. Finally, the Certification does not provide sufficient detail or assurances about the intellectual property comprising the system. Simply put, the Certification describes a generic digital rights management system that at this point has not been modified to meet the specific requirements of the Broadcast Flag system, and the Certification does not describe how it would be so modified. Taken together, these factors show that DivX

¹ See Report and Order and Further Notice of Proposed Rulemaking, *Digital Broadcast Content Protection*, MB Docket No. 02-230 (rel. Nov. 4, 2003).

DRM does not meet the Commission's interim requirements. In its reply to this Opposition, DXN should enhance its application for Certification to supply this critical missing information.

Below we set forth our concerns about the Certification. As noted, we hope to work with DXN as the technology evolves towards suitability for the Broadcast Flag system.

I. The DivX Certification Does Not Address How It Proposes to Impose Reasonable and Affirmative Constraints on Redistribution of Content

The DivX Certification does not address the scope of redistribution of digital broadcast content, and assumes that a generic rights management system is appropriate to give effect to the Broadcast Flag. The Certification does not actually describe how the system is applicable or effective. For this reason alone, DivX DRM cannot be accepted in its current form.

The Commission has decided that even in this interim process, technologies without proximity controls may be approved "where other reasonable constraints sufficiently limit the redistribution of content."² However, DivX DRM contains *neither* proximity controls³ nor other reasonable constraints that sufficiently limit the redistribution of content. For example, the Certification sets forth no maximum device count limit and no personal affinity-based control mechanisms. The Certification does describe a process whereby DivX DRM devices are associated through a cryptographic process to a single, unique User ID (a "User Domain") so that only those devices can decrypt Marked Content bound to the unique User Domain. However, six new devices can be registered to the User Domain every six months. This allows the number of

² Order, *Digital Output Protection Technology and Recording Method Certifications*, MB Docket Nos. 04-55, *et al.*, FCC 04-193, ¶ 72 (rel. Aug. 12, 2004) ("Certification Order").

³ As we have argued elsewhere, and restate here for the record, we believe that technologies considered for authorization in this interim process must contain, as a necessary condition, proximity controls that approximate the constraints that have heretofore prevented consumers from being retransmitters. Physical redistribution, which has been in existence for years, is well understood; however, there are difficult questions concerning what technological limits need to be placed on consumer retransmission such that content owners' rights are not trampled and the digital

DivX-equipped devices able to access content from a single user's domain to increase linearly over time without limit. This greatly increases the potential for indiscriminate redistribution of Marked Content.

The Certification sets forth a weak and inadequate affinity-based device registration process. The DivX DRM device's anonymous registration process requires no personal information to be supplied to the DivX DRM registration service when registering and associating DivX DRM devices to a single User Domain. Once a unique User Domain is established, additional DivX DRM devices can be registered to a User Domain using a simple password-protected logon. Since no additional personal information is required, the logon password could be distributed to strangers without any consequences for the initial registrant or the subsequent users. Thus, DivX DRM's anonymous User Domain device registration process fails to prevent indiscriminate redistribution of Marked Content.

In view of the absence of reasonable constraints limiting the redistribution of digital broadcast content, in its reply to this Opposition, DXN should agree to add effective proximity controls to its Certification. The MPAA Parties look forward to working with DXN to improve its submission in this regard.

II. The Certification Fails to Provide Sufficient Information on Licensing Concerns

The Certification cannot be approved at this time because DXN has failed to provide essential information concerning the licensing terms for DivX DRM. First, the Certification contains a copy of DXN's OEM Consumer Electronics License Agreement("OEM License"), which allows device manufacturers to build licensed DivX DRM-equipped products, but the

transition thwarted. These are not the sort of issues that are appropriately addressed in an accelerated, interim proceeding, even on a case-by-case basis.

OEM License contains no Compliance Rules that describe the output and recording rules applicable to the secure handling of decrypted DivX DRM Marked Content. Second, the OEM License does not contain Robustness Rules describing the standard to which DivX DRM Licensed Products should be built so as to prevent hacking, thus increasing the likelihood that in the absence of such requirements, decrypted DivX DRM Marked Content will inevitably be exposed to indiscriminate and unauthorized redistribution. Finally, the device certification process described in the OEM License (Exhibit B) does not describe the specific compliance tests necessary to obtain “DivX Certified Product” status. Without specific information on the testing that is conducted as part of certification, it is not clear how the certification process imposes a meaningful restraint on the entry of non-compliant devices into the marketplace.

Furthermore, the Certification provides provided little technical information on how device key revocation, user key revocation, and full system renewal would be handled in the case of a successful attack of the DivX DRM.⁴ Secure device revocation is a necessary component of any content protection technology. Similarly, a technology that is proposed for interim authorization also needs to have “renewability,” meaning the ability to be upgraded to repair or compensate for security flaws. Simply put, the Certification does not provide sufficient information to evaluate the relative security of the proposed DivX system – neglecting to provide adequate information on concepts essential to a secure system, such as revocation, renewal, and robustness of implementations.

⁴ For example, DXN did not include with its Certification a Content Participant License Agreement that would indicate the means and terms by which content owners could request revocation and renewal. Although the Commission has indicated that a content owner role is not required, *see* Certification Order ¶ 101, this failure to provide any revocation or renewal processes should weigh against authorization of DivX DRM.

III. DXN Must Provide for Effective Participation of Content Owners in Change Management and Enforcement

As the Commission has recognized, “change management over technical and legal matters is a critical and necessary element both in the administration of the above-referenced output protection technologies and recording methods.”⁵ However, the Certification has no provision for change management. Although the Commission has indicated it will retain general oversight of change management, agency oversight is a poor substitute for effective change management procedures in a fully fleshed out content participant agreement negotiated in the marketplace. Owing to the critical nature of these matters, the omission of a meaningful role for content owners or broadcasters in the change management process should weigh against approval of DivX DRM in its current form.

In addition, another critical component of any content protection technology is enforcement of the provisions of the technology license concerning robustness and compliance requirements against manufacturers. As noted, the Certification lacks any content participant agreement at all, and does not provide content owners with third-party beneficiary rights under the license or any other opportunity or mechanism for exercising persuasion through commercial relationships.⁶ Although the Commission has concluded that third-party enforcement rights are not necessary in all instances,⁷ the complete absence both of license terms and of content owner ability to enforce any license terms that may exist should weigh against DivX DRM.

⁵ Certification Order ¶ 94.

⁶ *See id.* ¶¶ 93, 95.

⁷ *See id.* ¶ 93.

IV. DXN Should Facilitate Ready Discussion of Its DivX DRM Certification by Clarifying That It Is Bound to DivX DRM's License and That DivX DRM Imposes No Obligations on Content Providers, Broadcasters, and Others

The MPAA Parties request that DXN, as part of its reply to this Opposition, respond to and/or clarify the following issues in a satisfactory manner in order to facilitate ready consideration of DivX DRM technology by the Commission in this proceeding.

First, DXN should clarify that it will abide by the compliance and robustness rules for DivX DRM when it incorporates DivX DRM into its own products. The critical issue is that no manufacturer of a downstream device receiving Marked or Unscreened Content should be able to do so without agreeing to follow compliance and robustness rules equivalent to those in the Broadcast Flag regulation. DXN should therefore clarify that for any use of the DivX DRM technology, DXN itself is obligated to comply with the DivX DRM license agreement in the same manner as any other Adopter licensee of the DivX DRM technology.

Second, DXN should clarify that there are no obligations that would impact content owners, broadcasters, consumers, or others described below by use of its technology. DivX DRM could become one of many technologies included in the Broadcast Flag system. All approved technologies will receive broadcast content marked with the Broadcast Flag and may be invoked or “triggered” in response to the Broadcast Flag in various devices, such as set-top boxes and digital video recorders. Content providers, broadcasters, and others currently cannot direct which approved technologies may receive broadcast content marked with the Broadcast Flag or which approved technologies may get triggered by the Broadcast Flag. Because content providers, broadcasters, and others exercise no direct control over the actual use of DivX DRM (or any of the other potential approved technologies), DXN should clarify that broadcasters, content providers, and others who do not take a license to the DivX DRM technology but who mark or broadcast content with a Broadcast Flag that triggers DivX DRM are not subject to any

obligations to DXN, including but not limited to intellectual property licensing obligations.

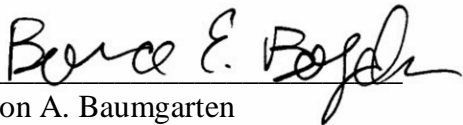
Furthermore, DXN should certify, as a condition of authorization in the interim process, that no consumer transmitting or receiving content marked with the Broadcast Flag will incur any claim of obligation from DXN.⁸

CONCLUSION

We look forward to working with DXN toward the goal of the Commission's ultimate authorization of DivX in this interim process for use in protecting digital broadcast content under the Broadcast Flag regulation.

Respectfully submitted,

THE MOTION PICTURE ASSOCIATION OF AMERICA, INC.
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PARAMOUNT PICTURES CORPORATION
SONY PICTURES ENTERTAINMENT INC.
TWENTIETH CENTURY FOX FILM CORPORATION
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⁸ Other technology providers so certified in the initial interim certification window. *See, e.g.*, Reply of Victor Co. of Japan, Ltd., MB Docket No. 04-68, at 3 (Apr. 16, 2004); Joint Reply of Philips Electronics North America Corp. and Hewlett-Packard Co., MB Docket No. 04-60, at 7-8 (Apr. 16, 2004); Reply of RealNetworks, MB Docket No. 04-65, at 11 (Apr. 16, 2004); Reply of Smartright Applicants, MB Docket No. 04-59, at 15 (Apr. 16, 2004); Reply Comments of Sony Corp., MB Docket No. 04-55 to 04-58, at 4 (Apr. 16, 2004); Reply of Tivo Inc., MB Docket No. 04-63, at 17 (Apr. 16, 2004); Consolidated Response of Microsoft to Oppositions to Certification, MB Docket No. 04-66, at 29 (Apr. 16, 2004); Letter from C. Bradley Hunt, MPAA, and Seth D. Greenstein, DTLA Policy Committee, to W. Kenneth Ferree, FCC, July 20, 2004, at 2-3.